

## SENATE BILL No. 528

---

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-33; IC 20-51.

**Synopsis:** School scholarship tax credit. Provides a state tax credit to a taxpayer that makes a contribution to a scholarship granting organization for use by the scholarship granting organization in a scholarship program to provide scholarships to eligible students. Defines "eligible student" as an individual who: (1) has legal settlement in Indiana; (2) is between five and 22 years of age; and (3) either: (A) qualifies for the federal free or reduced price lunch program; or (B) received a scholarship as an eligible student in the immediately preceding school year. Sets forth a process for the department of state revenue to certify a scholarship program administered by a scholarship granting organization.

**Effective:** Upon passage; January 1, 2009 (retroactive).

---

---

**Yoder, Stutzman**

---

---

January 15, 2009, read first time and referred to Committee on Tax and Fiscal Policy.

---

---

C  
o  
p  
y



First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

C  
o  
p  
y

## SENATE BILL No. 528

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2009 (RETROACTIVE)]:

4 **Chapter 33. School Scholarship Tax Credit**

5 **Sec. 1. As used in this chapter, "pass through entity" means:**

- 6 (1) a corporation that is exempt from the adjusted gross  
7 income tax under IC 6-3-2-2.8(2);  
8 (2) a partnership;  
9 (3) a limited liability company; or  
10 (4) a limited liability partnership.

11 **Sec. 2. As used in this chapter, "school scholarship program"**  
12 **refers to a grant program that is certified as a school scholarship**  
13 **program by the department of education under IC 20-51.**

14 **Sec. 3. As used in this chapter, "scholarship granting**  
15 **organization" refers to an organization that:**

- 16 (1) is exempt from federal income taxation under Section  
17 501(c)(3) of the Internal Revenue Code; and



(2) conducts a school scholarship program.

Sec. 4. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 6-5.5 (the financial institutions tax); and
- (3) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 5. As used in this chapter, "taxpayer" means an individual or entity that has state tax liability.

Sec. 6. Each taxable year, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a charitable contribution that the taxpayer makes during the taxable year to a scholarship granting organization for use by the scholarship granting organization in conducting a school scholarship program. The amount of the taxpayer's credit is equal to thirty-five percent (35%) of the amount of the charitable contribution made to the scholarship granting organization for a school scholarship program during the taxable year.

Sec. 7. A taxpayer is not entitled to a carryover, carryback, or refund of an unused credit.

Sec. 8. (a) If:

- (1) a pass through entity does not have state tax liability against which the credit may be applied; and
- (2) the pass through entity would be eligible for a credit if the pass through entity were a taxpayer;

a shareholder, partner, or member of the pass through entity is entitled to a credit under this chapter.

(b) The amount of the credit to which a shareholder, partner, or member of a pass through entity is entitled is equal to:

- (1) the credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 9. To apply a credit against the taxpayer's state tax liability, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department the information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the credit.

C  
o  
p  
y



1       **Sec. 10. A charitable contribution shall be treated as having**  
 2       **been given for a school scholarship program if:**

3       **(1) the charitable contribution is given to a scholarship**  
 4       **granting organization that conducts a school scholarship**  
 5       **program; and**

6       **(2) either:**

7           **(A) the taxpayer designates in a writing delivered to the**  
 8           **scholarship granting organization not later than the date**  
 9           **the charitable contribution is made that the charitable**  
 10          **contribution is to be used only for a school scholarship**  
 11          **program; or**

12          **(B) the scholarship granting organization provides the**  
 13          **taxpayer with written confirmation that the charitable**  
 14          **contribution will be dedicated for use in a school**  
 15          **scholarship program.**

16       **Sec. 11. The total amount of tax credits awarded under this**  
 17       **chapter may not exceed five million dollars (\$5,000,000) in any**  
 18       **state fiscal year.**

19       **Sec. 12. The department shall provide on the Internet web site**  
 20       **used by the department the following information:**

21          **(1) The application for the credit provided in this chapter.**

22          **(2) A timeline for receiving the credit provided in this chapter.**

23          **(3) The total amount of credits awarded under this chapter**  
 24          **during the current fiscal year.**

25       **SECTION 2. IC 20-51 IS ADDED TO THE INDIANA CODE AS**  
 26       **A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON**  
 27       **PASSAGE]:**

28       **ARTICLE 51. EDUCATIONAL SCHOLARSHIPS**

29       **Chapter 1. Definitions**

30       **Sec. 1. The definitions in this chapter apply throughout this**  
 31       **article.**

32       **Sec. 2. "Agreement" refers to an agreement between the**  
 33       **department of state revenue and an applicant that applies for**  
 34       **certification of a school scholarship program.**

35       **Sec. 3. "Contribution" refers to a contribution to a scholarship**  
 36       **granting organization for a school scholarship program.**

37       **Sec. 4. "Educational scholarship" refers to a grant to pay tuition**  
 38       **and fees that would otherwise be charged to:**

39          **(1) an eligible student; or**

40          **(2) a parent of an eligible student.**

41       **Sec. 5. "Eligible student" refers to an individual who:**

42          **(1) has legal settlement in Indiana;**

**C**  
**O**  
**P**  
**Y**



(2) is at least five (5) years of age and less than twenty-two (22) years of age on the date in the school year specified in IC 20-33-2-7; and

(3) either:

(A) qualifies for the federal free or reduced price lunch program; or

(B) received a scholarship under this article in the immediately preceding school year or the immediately preceding term of the current school year and qualified under clause (A) in the first year that the individual received a scholarship under this article.

Sec. 6. "Federal free or reduced price lunch program" refers to the national free or reduced price lunch program established under 42 U.S.C. 1751 et seq.

Sec. 7. "Participating school" refers to a public or nonpublic school that:

(1) an eligible student is required to pay tuition to attend; and

(2) voluntarily agrees to enroll an eligible student.

The term does not include a public school in a school corporation where the eligible student has legal settlement under IC 20-26-11.

Sec. 8. "Scholarship granting organization" refers to an organization that is:

(1) exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) organized at least in part to grant educational scholarships.

Sec. 9. "School scholarship" refers to an educational scholarship awarded by a scholarship granting organization.

Sec. 10. "Tuition and fees" means tuition, fees, and other costs that:

(1) an eligible student; or

(2) a parent of an eligible student;

is required to pay to enroll the eligible student in an elementary school program or high school program of a participating school. The term includes any payment for textbooks, transportation, and uniforms if the payments are typical for all other students attending the participating school.

## Chapter 2. Exchange of Information; Rules

Sec. 1. The department of state revenue shall maintain a publicly available list of the school scholarship programs that are certified by the department of state revenue. The list must contain names, addresses, and any other information that the department

C  
o  
p  
y



of state revenue determines is necessary for the public to determine which scholarship granting organizations conduct school scholarship programs. A current list must be posted on any Internet web site used by the department of state revenue to provide information to the public about educational matters.

**Chapter 3. Educational Scholarship Organizations; Certification; Administration of Contributions**

**Sec. 1.** As used in this chapter, "scholarship" refers to a school scholarship.

**Sec. 2.** A scholarship granting organization may apply to the department of state revenue for certification of an educational scholarship program as a school scholarship program.

**Sec. 3.** An educational scholarship program qualifies for certification as a school scholarship program if the applicant for certification:

- (1) is a scholarship granting organization;
- (2) applies to the department of state revenue on the form and in the manner prescribed by the department of state revenue;
- (3) enters into an agreement with the department of state revenue to comply with this article; and
- (4) demonstrates the applicant's financial viability to the department of state revenue, if the applicant will receive at least fifty thousand dollars (\$50,000) in contributions in a school year, by filing with the department of state revenue before the beginning of the school year financial information that demonstrates the financial viability of the scholarship granting organization.

**Sec. 4.** The department of state revenue shall certify all qualifying applicants for certification as scholarship granting organizations.

**Sec. 5.** An agreement must require a scholarship granting organization to do the following:

- (1) Provide a department of state revenue approved receipt to taxpayers for contributions made to the scholarship granting organization that will be used in a scholarship program. The department of state revenue shall prescribe the form of the receipt. The form must indicate:
  - (A) the amount of a contribution; and
  - (B) the part of the contribution that is being designated for use in a scholarship program.
- (2) Distribute at least ninety percent (90%) of the total amount of contributions as scholarships to eligible students.

**C  
o  
p  
y**



(3) Distribute one hundred percent (100%) of any income earned on contributions as scholarships to eligible students.

(4) Conduct criminal background checks on all the scholarship granting organization's employees and board members and exclude from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds.

(5) Maintain with the department of state revenue proof of the scholarship granting organization's continuing financial viability as required in section 3(4) of this chapter for each school year in which the scholarship granting organization will receive at least fifty thousand dollars (\$50,000) in contributions.

(6) Make the reports required by this chapter.

**Sec. 6. An agreement must prohibit a scholarship granting organization from distributing scholarships for use by an eligible student:**

(1) to enroll in a school that has:

(A) paid staff or board members; or

(B) relatives of paid staff or board members;

in common with the scholarship granting support organization;

(2) to enroll in a school that the scholarship granting organization knows does not qualify as a participating school; or

(3) to pay tuition and fees for a public school where the eligible student is entitled to enroll without the payment of tuition.

**Sec. 7. (a) A scholarship granting organization must publicly report to the department of state revenue by August 1 of each year the following information regarding the organization's scholarships in the previous school year:**

(1) The name and address of the scholarship granting organization.

(2) The total number and total dollar amount of contributions received during the previous school year.

(3) The:

(A) total number and total dollar amount of scholarships awarded during the previous school year; and

(B) total number and total dollar amount of scholarships awarded during the previous school year to students qualifying for the federal free and reduced price lunch

**C  
o  
p  
y**



1 program.

2 (b) The report must be certified under penalties of perjury by  
3 the chief executive officer of the scholarship granting organization.

4 Sec. 8. The department of state revenue shall prescribe a form  
5 for scholarship granting organizations to report information  
6 required under this chapter.

7 Sec. 9. The department of state revenue may, in a proceeding  
8 under IC 4-21.5, suspend or terminate the certification of an  
9 organization as a scholarship granting organization if the  
10 department of state revenue establishes that the scholarship  
11 granting organization has intentionally and substantially failed to  
12 comply with the requirements of this article or an agreement  
13 entered into under this article.

14 Sec. 10. If the department of state revenue suspends or  
15 terminates the certification of an organization as a scholarship  
16 granting organization, the department of state revenue shall notify  
17 affected scholarship students and their parents of the decision as  
18 quickly as possible. A scholarship student affected by a suspension  
19 or termination of a scholarship granting organization's  
20 certification shall remain an eligible student under this article until  
21 the end of the school year after the school year in which the  
22 scholarship granting organization's certification is suspended or  
23 terminated, regardless of whether the scholarship student qualifies  
24 for the federal free or reduced price lunch program.

25 Sec. 11. The department of state revenue may conduct either a  
26 financial review or an audit of a scholarship granting organization  
27 if the department has evidence of fraud.

28 SECTION 3. [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]  
29 (a) IC 6-3.1-33, as added by this act, applies only to contributions  
30 made in taxable years beginning after December 31, 2008.

31 (b) The department of education after consultation with the  
32 department of state revenue, may adopt temporary rules in the  
33 manner provided for the adoption of emergency rules to implement  
34 IC 20-51, as added by this act. A temporary rule adopted under  
35 this SECTION expires on the earliest of the following:

36 (1) The date another temporary rule is adopted under this  
37 SECTION that supersedes or repeals the previously adopted  
38 temporary rule.

39 (2) The date that a permanent rule adopted under IC 4-22-2  
40 supersedes or repeals a temporary rule adopted under this  
41 SECTION.

42 (3) The date specified in the temporary rule.

C  
o  
p  
y





1           **(4) June 30, 2011.**  
2           **SECTION 4. An emergency is declared for this act.**

**c  
o  
p  
y**

